

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**ZACHARY BAUGHMAN,**  
individually and on behalf of all others  
similarly situated,

*Plaintiff,*

v.

**PRIORITY CONCEPTS INC.,** a New  
York registered corporation,

*Defendant.*

Case No. 23-cv-5483 (PKC) (RR)

**FIRST AMENDED CLASS  
ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff Zachary Baughman (“Plaintiff Baughman” or “Baughman”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Priority Concepts Inc. (“Defendant” or “Priority Concepts”) to stop the Defendant from violating the Telephone Consumer Protection Act (“TCPA”) by placing unsolicited pre-recorded calls without consent. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Baughman, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**PARTIES**

1. Plaintiff Zachary Baughman is a resident of Greenville, Ohio.

2. Defendant Priority Concepts is a New York registered corporation headquartered in Melville, New York. Defendant Priority Concepts conducts business throughout this District, New York, and the U.S.

### **JURISDICTION AND VENUE**

3. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

4. This Court has personal jurisdiction over the Defendant because the Defendant has its headquarters located in this state.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant has its headquarters in this District and the wrongful conduct giving rise to this case was directed from this District.

### **INTRODUCTION**

6. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass’n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at \*5 (U.S. July 6, 2020).

7. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

8. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

9. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

10. According to online robocall tracking service “YouMail,” 4.9 billion robocalls were placed in June 2023 alone, at a rate of 161.9 million per day. [www.robocallindex.com](http://www.robocallindex.com) (last visited July 16, 2023).

11. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, [www.fcc.gov/consumer-help-center-data](http://www.fcc.gov/consumer-help-center-data).

12. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.<sup>1</sup>

13. “The FTC receives more complains about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of

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<sup>1</sup> <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).<sup>2</sup>

### COMMON ALLEGATIONS

14. Defendant Priority Concepts provides business support solutions to businesses, which includes assistance in registering for the Employee Retention Credit (“ERC”), a refund offered by the US Government.<sup>3</sup>

15. The ERC was enacted by the CARES Act in March of 2020 and expanded upon through the American Rescue Plan Act, enabling companies to collect as much as \$26,000 per employee based on revenues generated during the Covid pandemic.<sup>4</sup>

16. Defendant Priority Concepts offers its ERC registry services to companies that want to use their services. If a company qualifies and receives its ERC credit payment, a portion of the payments are paid to Priority Concepts in exchange for their work to procure the ERC payments.<sup>5</sup>

17. Defendant Priority Concepts places telemarketing calls to businesses and consumers to solicit its ERC services.

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<sup>2</sup> [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)

<sup>3</sup> <https://priorityconceptsinc.com/ertc/>

<sup>4</sup> <https://www.the-bct.com/>

<sup>5</sup> <https://priorityconceptsinc.com/advance-payment/>

18. Defendant Priority Concepts is open about placing cold calls, as per the job responsibilities listed in a job posting for an Inside Sales Representative:

#### About the job

 This job is sourced from a job board. [Learn More](#)

We're searching for an enthusiastic inside sales representative to join our team and support business growth. You'll need strong persuasion skills to turn customer prospects into qualified leads. Our ideal candidate is an excellent deal-maker who loves talking to people. If you're looking to jump-start your career in sales, please apply today!

#### Compensation

\$40,000 Base - \$80,000 (with Bonuses and Commissions)

**Responsibilities:**Expand the clientele by finding new business opportunities within specific geographies Keep the customer database updated to ensure information on prospective and past clients is current Report on key performance and sales metrics on a monthly and quarterly basis to ensure sales goals are achieved Qualify incoming leads so appointments are arranged as fast as possible to provide an excellent customer service experience Prospect potential customers via cold calling, email, or other forms of communication to ensure they are added to the sales pipeline and produce more qualified leads Present and sell company products and services to new and existing customers Follow up on warm leads to further the sales process Track all sales activities in the company CRM system Understand and explain our services to clients Reach agreed-upon sales targets by the deadline Set and meet sales goals and objectives set by leadership Resolve customer inquiries and complaints Set follow-up appointments to keep customers aware of the latest developments Improve sales skills to increase sales success rates Develop and maintain meaningful relationships with clients **Qualifications:**High 6

19. Defendant Priority Concepts places unsolicited pre-recorded telemarketing calls, often times to cellular phone numbers, as per Plaintiff's experience.

20. Defendant Priority Concepts hides behind a made-up employee named Kenneth Davis and uses the company name Unions Refund in order to avoid liability for its unsolicited pre-recorded telemarketing calls.

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<sup>6</sup> <https://www.linkedin.com/jobs/view/inside-sales-representative-at-priority-concepts-inc-3661561746/>

21. According to a search on Google.com, there are no websites associated with Unions Refund.<sup>7</sup>

22. In addition, according to OpenCorporates.com, a website that collects corporate data from over 140 jurisdictions, there are no companies with the name Unions Refund.<sup>8</sup>

23. Numerous websites have captured pre-recorded voicemails that Priority Concepts has placed. All of these pre-recorded voicemails closely resemble the voicemail that Plaintiff Baughman received, including:

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<sup>7</sup> <https://www.google.com/search?q=%22unions+refund>

<sup>8</sup>

<https://opencorporates.com/companies?utf8=%E2%9C%93&utf8=%E2%9C%93&q=unions+refund>

GET ALL INFO ON 484-235-2841

[I Own This Number](#)

## Typical Messages

🔊 Yeah hi this is Kenneth Davis Union street(?). Today is Friday the ninth. Could you give us a call when you receive this at 855-795-4222. Again the phone number is 855-795-4222. We still see hearing that your business should be entitled to your retroactively clean the W-2 employees this would be for 2020 and 2021 so if you have a few minutes we can update you with the total refund going back to your business as now as her approval sorry as well as the time frame you would be receiving your refund check so look forward to speaking with you. Bye bye.



🔊 Hello, this is Kenneth Davis, Unions Refund. Today is Tuesday the 23rd. Could you give me a call when you receive this at 844-533-7555? Again, that number is 844-533-7555. We still see that your business would be entitled to retroactively claim your W-2 employees. This would be for 2020 and 2021. If you have a few minutes, I can update you the refund total back to your business, as well as the time frame for disbursement.



🔊 Hello this is Kenneth Davis with Union refund. Today is Wednesday the 24th. Could you give me a call when you get this at 844-533-7555. Again that phone number is 844533.



9

24. Consumers have posted complaints regarding unsolicited pre-recorded calls they received from Defendant Priority Concepts, including:

- “Transcription: ‘Hi this is Kenneth Davis with unions refund today is Wednesday the seventh could you give me a call when you receive this at 855-795-4222 again the phone number is 855-795-4222 we see here that your business a should still be entitled to your retroactively claim your W-2 employees this would be for 2020 and 2021 when you have a few minutes I can update you with the total refund amount that would be going back to your business as well as the timeframe you would be receiving the refund check so I look forward to speaking with you bye-bye...’”<sup>10</sup>

<sup>9</sup> <https://directory.youmail.com/phone/484-235-2841>

<sup>10</sup> <https://800notes.com/Phone.aspx/1-855-795-4222>

- “Same message as above submitted by Sarah H. I would like to stop receiving these calls. Is there anything I can do about this? Thank you.”<sup>11</sup>
- “Same as Sarah H - verbatim. I don't have any employees lol”<sup>12</sup>
- “Same exact transcription as Sarah above. ‘Hi this is Kenneth Davis with unions refund today is Wednesday the seventh could you give me a call when you receive this at 855-795-4222 again the phone number is 855-795-4222 we see here that your business a should still be entitled to your retroactively claim your W-2 employees this would be for 2020 and 2021 when you have a few minutes I can update you with the total refund amount that would be going back to your business as well as the timeframe you would be receiving the refund check so I look forward to speaking with you bye-bye...’”<sup>13</sup>
- “Same as above  
Voicemail was ‘texted from’ (570) 307-9635. Looks like a lot of Senior Scam calls coming from various (570) 307-xxxx numbers in Pennsylvania. Sad”<sup>14</sup>
- “I just received the exact same VM word for word as the above posts. Seems very suspicious as I don’t have employees.”<sup>15</sup>
- “Same as Sarah, except for today's date (‘today is Thursday the 8th...’)”<sup>16</sup>
- “Exact same voicemail, except it said Thursday the 8<sup>th</sup>”<sup>17</sup>
- “I got the same message....”<sup>18</sup>
- “These people have literally harassed me for months!!! I have ask multiple times to not be called and they hang up; I have since blocked them so when they call now after ‘1’ ring it goes to VM and they continue to leave messages.”<sup>19</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



- “Just recieved the same call also!”<sup>20</sup>
- “OMG! You nailed it! Word for Word. This scammer messed up when he said, ‘back to your business.’ People are so desperate and bored with their own life. They need to get a life or just throw their life away.”<sup>21</sup>

25. In response to these calls, Plaintiff Baughman brings this case seeking injunctive relief requiring the Defendant to cease from violating the TCPA, and an award of statutory damages to the members of the Class and costs.

### **PLAINTIFF BAUGHMAN’S ALLEGATIONS**

26. Plaintiff Baughman is the subscriber and the sole user of the cell phone number ending with 2984.

27. On June 7, 2023 at 3:10 PM, Plaintiff received an unsolicited telemarketing call from Defendant Priority Concepts from 484-235-2841 to his cell phone number. Plaintiff Baughman did not answer this call but a pre-recorded voicemail was left, which he listened to, stating:

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

**Transcription**

"Hi hi this is Kenneth Davis with unions refund today is Wednesday the seventh could you give me a call when you receive this at 855-795-4222 again the phone number is 855-795-4222 we see here that your business should still be entitled to your retroactively claim your W-2 employees this would be for 2020 and 2021 when you have a few minutes I can update you with the total refund amount that would be going back to your business as well as the timeframe you would be receiving the refund check so I look forward to speaking with you bye-bye..."

22

28. Plaintiff Baughman believes the voicemail was pre-recorded because it exactly matches voicemails, including mention of the specific date that other consumers posted online through websites like 800notes.com:



**Sarah Hanviriyapunt**  
7 Jun 2023 | 1 reply

□ 0 □

Transcription: "Hi this is Kenneth Davis with unions refund today is Wednesday the seventh could you give me a call when you receive this at 855-795-4222 again the phone number is 855-795-4222 we see here that your business a should still be entitled to your retroactively claim your W-2 employees this would be for 2020 and 2021 when you have a few minutes I can update you with the total refund amount that would be going back to your business as well as the timeframe you would be receiving the refund check so I look forward to speaking with you bye-bye..."

*Caller: Unions Refund*  
*Call type: Scam suspicion*

23

<sup>22</sup> <https://www.dropbox.com/scl/fi/0qyimkesbg7sg7bcfm0qc/voicemail-1168.m4a?rlkey=vghzd4cfe6g6338t4c82e8wic&dl=0>

<sup>23</sup> <https://800notes.com/Phone.aspx/1-855-795-4222>



**CJ**

7 Jun 2023 | 1 reply

☐ 0 ☐

Same message as above submitted by Sarah H. I would like to stop receiving these calls. Is there anything I can do about this? Thank you.

*Caller: Kenneth Davis with Unions Refund*

24



**N/A**

7 Jun 2023

☐ 0 ☐

Same as Sarah H - verbatim. I don't have any employees lol

*Caller: Unions Refund*

*Call type: Scam suspicion*

25



**Heather**

7 Jun 2023

☐ 0 ☐

Same exact transcription as Sarah above. "Hi this is Kenneth Davis with unions refund today is Wednesday the seventh could you give me a call when you receive this at 855-795-4222 again the phone number is 855-795-4222 we see here that your business a should still be entitled to your retroactively claim your W-2 employees this would be for 2020 and 2021 when you have a few minutes I can update you with the total refund amount that would be going back to your business as well as the timeframe you would be receiving the refund check so I look forward to speaking with you bye-bye..."

*Caller: Unions Refund*

*Call type: Scam suspicion*

26



**HPM**

7 Jun 2023

☐ 0 ☐

I just received the exact same VM word for word as the above posts. Seems very suspicious as I don't have employees.

*Caller: Kenneth Davis with union refunds*

27

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<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.

29. In addition to the above, Plaintiff believes the voicemail was pre-recorded because the voicemail begins with 3 full seconds of dead silence before background noise can be heard and the recording begins.

30. Phone number 484-235-2841 is not in service.

31. Phone number 855-795-4222 is owned/operated by Defendant Priority Concepts.<sup>28</sup>

32. Plaintiff's attorneys called 855-795-4222 on July 4, 2023. An automated message asked a qualifying question – asking the caller to press '1' if the business has more than 4 employees. Upon clicking '1', the call was connected to a live agent who asked additional qualifying questions.

33. At the end of the call, the same agent sent an agreement to be signed that clearly indicates the name Priority Concepts, and which was sent by Priority Concepts:

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<sup>28</sup> As per an investigation conducted by Plaintiff's attorneys.

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**Priority Concepts Consulting Agreement to eSign**

1 message

**Priority Concepts** <sign@na1.conga-sign.com>  
Reply-To: Priority Concepts <info@priorityconceptsinc.com>  
To: [REDACTED]

Tue, Jul 4, 2023 at [REDACTED]



**Please Sign Documents**

Priority Concepts has sent Consulting Agreement for [REDACTED] for your signature.

Thank you for contacting Priority Concepts. Based on the initial review of your information, it looks like [REDACTED] may qualify for the Employee Retention Credit (ERC) program.

34. Only one agent was interacted with throughout the investigation call.
35. Plaintiff Baughman has never provided his cell phone number to Defendant Priority Concepts in any context. The pre-recorded voicemail that he received was unsolicited.
36. The unauthorized solicitation telephone call that Plaintiff received from or on behalf of Defendant has harmed Plaintiff Baughman in the form of annoyance, nuisance, and invasion of privacy, occupied his phone line, and disturbed the use and enjoyment of his phone.
37. Seeking redress for these injuries, Plaintiff Baughman, on behalf of himself and Class of similarly situated individuals, brings suit under the TCPA.

## CLASS ALLEGATIONS

38. Plaintiff Baughman brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seeks certification of the following Class:

**Pre-recorded No Consent Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) the Defendant called on their cellular telephone number (2) using an artificial or pre-recorded voice.

39. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against the Defendant have been fully and finally adjudicated and/or released. Plaintiff Baughman anticipates the need to amend the Class definition following appropriate discovery.

40. **Numerosity and Typicality:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable, and Plaintiff is a member of the Class.

41. **Commonality and Predominance:** There are many questions of law and fact common to the claims of the Plaintiff and the Class, and those questions

predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) whether Defendant placed pre-recorded voice message calls to Plaintiff and members of the Pre-recorded No Consent Class without first obtaining consent to make the calls;
- (b) whether the calls constitute a violation of the TCPA;
- (c) whether members of the Class are entitled to treble damages based on the wilfulness of Defendant's conduct.

42. **Adequate Representation:** Plaintiff Baughman will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff Baughman has no interests antagonistic to those of the Class, and the Defendant has no defenses unique to Plaintiff. Plaintiff Baughman and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff Baughman nor his counsel have any interest adverse to the Class.

43. **Appropriateness:** This class action is also appropriate for certification because the Defendant has acted or refused to act on grounds generally applicable to the Class and as a whole, thereby requiring the Court's imposition of uniform

relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as wholes, not on facts or law applicable only to Plaintiff Baughman. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CLAIM FOR RELIEF**

**Telephone Consumer Protection Act**

**(Violation of 47 U.S.C. § 227)**

**(On Behalf of Plaintiff Baughman and the Pre-recorded No Consent Class)**

44. Plaintiff repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

45. Defendant transmitted unwanted telephone calls to Plaintiff Baughman and the other members of the Pre-recorded No Consent Class using a pre-recorded voice message.



46. These pre-recorded voice calls were made *en masse* without the prior express written consent of the Plaintiff and the other members of the Pre-recorded No Consent Class.

47. The Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Class as defined above; appointing Plaintiff as the representative of the Class; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Baughman requests a jury trial.

**ZACHARY BAUGHMAN**, individually  
and on behalf of all others similarly situated,

DATED this 4th day of October, 2023.

By: /s/ Stefan Coleman

Stefan Coleman  
**Coleman PLLC**  
11 Broadway, Suite 615  
New York, NY 10001  
law@stefancoleman.com  
Telephone: (877) 333-9427

Avi R. Kaufman\*  
kaufman@kaufmanpa.com  
**KAUFMAN P.A.**  
237 South Dixie Highway, Floor 4  
Coral Gables, FL 33133  
Telephone: (305) 469-5881

*Attorneys for Plaintiff and the putative Class*

*\* Pro Hac Vice motion forthcoming*